

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MICKI SCOTT, No. CIV.S-04-2390 DAD PS

Plaintiff,

v.

ORDER

JO ANNE B. BARNHART,
Commissioner of
Social Security,

Defendant.

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This social security matter is before the court on defendant's motion to dismiss. Defendant's motion seeks dismissal of the complaint on the grounds that it was filed beyond the sixty-day statute of limitations period provided by 42 U.S.C. § 405(g). However, while defendant has styled her motion as a motion to dismiss, the parties are hereby provided notice that the court has construed the motion as one for summary judgment because it relies on materials outside of the pleadings. See Fed. R. Civ. P. 12(b)

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1 (requiring "all parties shall be given reasonable opportunity to
2 present all material made pertinent to" a converted motion).

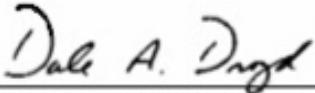
3 Additionally, while defendant's motion relies on the
4 declaration of Joan DeVera of the Social Security Administration and
5 certain exhibits attached thereto, that evidence has not been filed
6 with the court. It appears those documents have been inadvertently
7 omitted from defendant's motion.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Defendant shall submit the evidence relied upon in
10 support of her motion for summary judgment within ten (10) days of
11 the date of service of this order; and

12 2. Plaintiff shall file any further showing in response to
13 defendant's motion within ten (10) days of receiving defendant's
14 evidence.

15 DATED: April 25, 2006.

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17 DALE A. DRCZD
18 UNITED STATES MAGISTRATE JUDGE

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